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Supreme Court, U.S.
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No. 97-0693

In The

Supreme Court of the United States

October Term, 1997

DELORES MARIE SWEKEL, Personal Representative of the Estate of ARNOLD F. SWEKEL, Deceased,

Petitioner,

vs.

GREGORY HARRINGTON, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

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STATEMENT OF THE CASE

The petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit seeks this Court's review of the Court of Appeals decision affirming the district court's *sua sponte* grant of summary judgment. Petitioner, the plaintiff in the case below, is the wife of Arnold Swekel, who died from injuries received when he was struck by an automobile in the City of River Rouge, Michigan, on September 30, 1988. Police officers employed by the City of River Rouge investigated the incident, and identified one David Haener as the driver of the automobile that had struck and killed Arnold Swekel. David Haener was arrested, gave a full confession, pled no contest to the charge of negligent homicide brought against him and served a custodial sentence. Petitioner then prosecuted a successful action for wrongful death against David Haener in state court.

Petitioner, on the last day that an action for wrongful death could be timely filed in state court, instead filed a complaint in the United States District Court for the Eastern District of Michigan, against the City of River Rouge and several individual officers employed by the Police Department of the City of River Rouge, claiming *inter alia* that the named defendants had, while acting under color of law, deprived her of access to the courts. The essence of her denial of access claim was that the several named officers had attempted to conceal the fact that a second automobile had been involved in the incident ending in Arnold Swekel's death, and that the second automobile was driven by Russell Harrington, a high-ranking member of the Police Department of the City of River Rouge, or Todd Kulinski, Russell Kulinski's son.

Discovery was completed and the case was scheduled for trial before the Honorable George E. Woods, United States District Court Judge, on May 15, 1995. On May 12, 1955, Judge

Woods issued an Order to Show Cause why petitioner's complaint should not be dismissed. Judge Woods issued the referenced Order to Show Cause because he questioned whether the petitioner could establish that the cover-up alleged by petitioner had actually hindered petitioner's access to the state courts (Transcript of Hearing on Order to Show Cause, App. A-5, 12):

> Accordingly, this Court interprets *Joyce* and *Cincinnati Radiation* to hold that whether Defendants could have violated Plaintiff's right of access depends upon when Plaintiff became aware of the particular identity or the existence of the alleged second driver.
>
> The fact that Plaintiff never has filed a state wrongful death action suit against a particular individual alleged to be the second driver is not dispositive; the relevant inquiry is whether the plaintiff could have filed such a suit, if she wanted to.

On May 15, 1995, Judge Woods granted summary judgment in favor of the defendants, and dismissed the case. Judge Woods first concluded, as a matter of fact, that petitioner could have pursued a timely state court action against the alleged second driver, and for that reason could not establish a denial of access to the courts (*Id.*, 13):

> Well, if plaintiff knew or thought at the time of filing the instant lawsuit that Defendants engaged in a coverup specifically to shield one of the Kulinskis or a John Doe, as they did later, as I understand it, and any coverup by the defendants would not have deprived the plaintiff of her right of access to the courts.

Judge Woods then reasoned that because the facts demonstrated

that petitioner had (and had utilized) unhindered access to the state courts, and had more than sufficient knowledge to pursue a timely state court claim against the claimed beneficiaries of an alleged cover-up, petitioner simply could not establish a denial of access to the courts. Petitioner does *not* challenge the factual accuracy of those conclusions in seeking this Court's review.

Petitioner timely appealed to the United States Court of Appeals for the Sixth Circuit. The Court of Appeals affirmed the dismissal of the complaint by the district court. Petitioner claims that this case was

> dismissed by the Sixth Circuit on the ground that [petitioner's] underlying wrongful death claim was not completely destroyed by the police cover-up since she did not establish that the state court could not adequately deal with any problems of delay caused by the police officers' cover-up and destruction of evidence.

Pet., 2-3. Actually, the Court of Appeals, after *de novo* review, concluded as a matter of fact that:

> [T]he plaintiff *must present evidence* that the defendants' actions actually rendered any available state court remedy ineffective. Swekel has failed to do so.

(Emphasis added). *Swekel v. City of River Rouge*, Opinion of United States Court of Appeals for the Sixth Circuit, App. A-4, 9. The question presented to and decided by the Court of Appeals was not, as the petition suggests, whether petitioner's "underlying wrongful death claim was . . . completely destroyed", but rather whether petitioner had presented sufficient

evidence to establish that her access to the courts had been denied.

As detailed below, there is no cause for this Court's review of the factbound decision of the district court, and the factbound decision of the United States Court of Appeals for the Sixth Circuit, concluding that petitioner had not presented sufficient evidence to submit to the jury the claim that she had been denied access to the courts.

A. The petition misrepresents that the petitioner was precluded from bringing an action for wrongful death against the purported second driver.

Petitioner claims it essential to consider the "background" of this case to "fully appreciate the importance of the issues presented". Pet. 3. Respondents certainly agree that a review of the facts presented and evidence offered prior to the grant of summary judgment is essential. Those facts and that evidence unequivocally demonstrate that petitioner did not offer any credible evidence that she had been denied access to the courts. Similarly, those facts and that evidence demonstrates that the petition misrepresents the record in claiming that:

> Swekel was precluded from bringing a second wrongful death action against the second driver because Defendants concealed key facts that would have provided the basis of her claim for redress.

Id., 5. There was not a scintilla of credible evidence offered in support of the claim that petitioner could not have timely brought a wrongful death action against the Kulinskis; in fact, petitioner admits that her attorney in the state court action for wrongful death *elected* not to pursue such an action:

> . . . [S]ince Swekel's attorney was aware of Defendants' lack of investigation[1], he *opted* to file suit under 42 U.S.C. § 1983 claiming that the police cover-up denied Swekel access to the courts.

(Emphasis added). *Id.* Swekel's attorney *opted* to file a § 1983 action on the last day an action for wrongful death against the Kulinskis could timely be filed in state court.

Further, the factual record demonstrates that the petitioner conceded, and the district court found as fact, that from September 30, 1988, through September 30, 1991, she believed that a second driver was involved in the collision causing her husband's death (Order Denying Plaintiff's Motion for Reconsideration, App. A-3, 7). Petitioner conceded, and the district court found as fact, that Officer Dwight Black had been deposed by her attorney during state court proceedings, on April 11, 1989 and had revealed that four (4) witnesses had claimed that a second car was involved in the collision causing her husband's death (*Id.*, 7). Petitioner conceded, and the district court found as fact, that two (2) percipient witnesses had been deposed by her attorney during the state court action, on June 28, 1989 and then on December 5, 1989, and had stated that a second car was involved in the collision causing her husband's death (*Id.*, 7). Petitioner conceded, and the district court found as fact, that she had concluded not later than 1989 that Todd Kulinski was in fact the driver of the second car rumored to have been involved in the collision causing her husband's death (*Id.*, 8). Petitioner conceded, and the district court found as fact, that she had verified that the Kulinskis owned a vehicle similar in appearance to the second car rumored to have been involved in the collision causing her husband's death in 1989 (*Id.*, 8).

---

1. Petitioner conceded that she has no cognizable claim, under 42 U.S.C. § 1983, for "lack of investigation".

The district court, in granting summary judgment in favor of the defendants, first noted that his decision turned upon whether "defendants prevented plaintiff from bringing a wrongful death action against one or both of the Kulinskis", and concluded as a matter of fact that the defendants had not (*Id.*, 9-11):

> The Court finds that, even if everything the plaintiff has alleged is true, no genuine issue of material facts exists as to whether plaintiff eventually could have pursued a viable tort claim against either one of the Kulinskis.

The Sixth Circuit Court of Appeals summarized the factual findings of the district court:

> The district court found that Swekel possessed a sufficient factual basis to file a "John Doe" suit in state court. These facts are as follows: On December 5, 1989, the Plaintiff deposed Estel Chaffins, who testified that two cars were involved in the accident. Furthermore, in another deposition taken on June 28, 1989, Plaintiff's counsel asked the accident witness whether he knew Todd Kulinski. Finally, early in 1990, Plaintiff's counsel sent a copy of Mr. Chaffins statement to the police and requested that they re-open the case. These actions demonstrated to the district court that Swekel knew of a second driver before the three year statute of limitations had run and could have filed a suit in state court against a "John Doe" defendant. The district court conceded that "John Doe" suits do not toll the statute of limitations in Michigan . . . but reasoned that with the aid of discovery Swekel may have been able to discover the identity of the second driver before the statute ran. Consequently, the

> district court granted summary judgment to Defendants *sua sponte.*

(Citation omitted). *Swekel v. City of River Rouge*, A-4, 4.

The Court of Appeals then found, as a matter of fact upon *de novo* review, that petitioner had presented insufficient evidence of a denial of access to the courts to survive summary judgment:

> The case at bar involves alleged pre- filing abuses. Swekel claims that the Defendants effectively denied her access to courts by failing to investigate the possibility of a second driver and covering up any such evidence. She claims that the Defendants' actions caused Michigan's three-year statute of limitations to run before she could file suit. We agree with Swekel, that if true, the Defendants' actions are reprehensible. Yet, that is not the issue before us. Instead, we must determine whether their actions amounted to a constitutional violation.
>
> The alleged actions occurred pre-filing, and thus, Swekel bears the burden of showing that such actions foreclosed her from filing suit in state court. The most compelling evidence would be if Swekel went to the state courthouse and was physically prevented or mechanically barred from filing her lawsuit or her suit was dismissed as untimely. Swekel has not presented any such evidence. Therefore, we agree with the district court that Swekel has failed to show absolute denial from state court.
>
> Our inquiry however, does not conclude at this point. This case does not involve an issue of whether

> the Plaintiff could enter the courthouse and file suit, but instead whether filing such a suit was rendered ineffective by the Defendants' actions.
>
> Swekel alleges that the police covered-up proof against one of their own, destroyed critical evidence, and delayed Swekel's own investigation. These allegations, if true, would substantially prejudice Swekel's ability to recover in state court. Delay alone causes "state [sic; stale] evidence and the fading of material facts in the minds of potential witnesses." . . . ("Delay haunts the administration of justice . . . The most erratic gear in the justice machinery is at the place of fact finding, and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination.") Swekel, however, never presented evidence that the state court could not adequately address these problems. In fact, none of the evidence before this court establishes that Swekel even attempted to go to the state court in first instance. Before filing an "access to courts" claim, a plaintiff must make some attempt to gain access to the courts; otherwise, how is this court to assess whether such access was in fact "effective" and "meaningful"?
>
> A plaintiff cannot merely guess that a state court remedy will be ineffective because of a defendant's actions. Rather, the plaintiff must present evidence that the defendants' actions actually rendered any available state court remedy ineffective. Swekel has failed to do so.

Id., 9-10.

Thus, it is readily apparent that both the district court and

the United States Court of Appeals for the Sixth Circuit have concluded, as a matter of fact, that petitioner has *not* established, and in fact has offered no credible evidence to establish, that she was precluded from bringing an action for wrongful death against the purported second driver, and the petition misrepresents that she was.

B. The petition misrepresents that the opinion of the United States Court of Appeals for the Sixth Circuit leaves a victim's family without redress where state actors successfully conceal the cause and circumstances of a death until the state statute of limitations has run.

The petition, in describing the proceedings below, makes the claim that:

> . . . The Sixth Circuit refuses to sustain a claim of denial of access based on police cover-up unless the plaintiff first filed suit against the unknown defendant. This leads to the inescapable conclusion that if a police cover-up successfully hides the true facts from the victim's family until the statute of limitations has run, the victim's family is without redress.

Pet., 8-9. That statement is simply and unequivocally not true. The Court of Appeals specifically noted that in most cases claiming pre-filing abuses (just such as the one brought by the petitioner), such abuses are *easily* addressed in the state courts:

> A court must analyze several factors before deciding whether a person's fundamental right of access to the courts has been violated. First, a court must ascertain whether the abuse occurred pre- or post-filing. When the abuse transpires post-filing, the aggrieved party is already in court and that court usually can address the

> abuse, and thus, an access to courts claim typically will not be viable. If the abuse occurs pre-filing, then the plaintiff must establish that such abuse denied her "effective" and "meaningful" access to the courts . . . She can do this only by showing that the defendants' actions foreclosed her from filing suit in state court or rendered ineffective any state court remedy she previously may have had . . . In most instances, state courts can address pre-filing abuses by tolling the statute of limitations or allowing for a "spoliation of evidence" lawsuit.

Swekel v. City of River Rouge, Opinion of Sixth Circuit Court of Appeals, App. A-4, 9). The Court of Appeals thus specifically addressed the circumstance where "a police cover-up successfully hides the true facts from the victim's family until the statute of limitations has run", and has specifically found that "the victim's family is [*not*] without redress" in the state courts under such circumstance.

REASONS FOR DENYING THE WRIT

I.

THE PETITION SHOULD BE DENIED BECAUSE THERE IS NO CONFLICT BETWEEN THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND ANY OTHER UNITED STATES COURT OF APPEALS RELATING TO THE RIGHT OF ACCESS TO THE COURTS.

The petition's claim that the factbound decision of the United States Court of Appeals for the Sixth Circuit conflicts with decisions of other Courts of Appeals is simply wrong. The petitioner reveals the essential flaw in her claim that she has been denied access to the courts by stating

> Swekel was precluded from bringing a second wrongful death action against the second driver because Defendants concealed key facts that would have provided the basis of her claim for redress. *Since the police failed to investigate the identity of the second driver, Swekel never learned any concrete facts which clearly established the identity of the second driver prior to the expiration of the Michigan statute of limitations.*

(Emphasis added). Pet., 5.

The central question posed in this case is whether, when individual police officers *unsuccessfully* attempt to conceal facts about the death of plaintiff's decedent, those individuals have acted in violation of plaintiff's right of access to the courts. Both the district court and the Court of Appeals unequivocally held that such an *unsuccessful* conspiracy did not violate petitioner's right of access, and no other United States Court of Appeals has issued an opinion in conflict with that of the Sixth Circuit.

Petitioner claims that the United States Court of Appeals for the Sixth Circuit requires that a plaintiff demonstrate a "high degree of impairment of access" to establish a denial of the right to access. Petitioner then claims, without any support that can be gleaned from the cases she cites, that the Court of Appeals imposes a *higher* burden than that imposed by other United States Courts of Appeals, seeking review on the basis of that perceived conflict. In fact, no such conflict exists.

In claiming that the United States Court of Appeals for the Sixth Circuit imposes a higher burden, the Petitioner relies upon *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984), and *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983). Petitioner's

Brief at 14-17. Neither *Bell* nor *Ryland* support the argument that a conflict between Courts of Appeals exists.

In *Bell*, Daniel Bell was shot and killed by Thomas Grady, a Milwaukee police officer. Another officer, Louis Krause, observed Grady plant a knife in the deceased Bell's hand, and both officers falsely claimed in their respective police reports that Grady shot Bell because Bell had threatened Grady with the knife. Twenty years later, Krause revealed that he and Officer Grady had covered up the true circumstances of Daniel Bell's death. Bell's relatives and estate sued the City of Milwaukee, the police department, and the two officers alleging, among other things, that the cover-up of the shooting deprived them of their due process right of access to the courts because by concealing the true facts, the officers prevented Bell's family members from realizing that they had a cause of action and seeking redress.

The Bell family had brought a state court action for wrongful death nearly twenty (20) years prior to filing the § 1983 action, and had settled the state court action for $1,800. The district court specifically found as a matter of fact that the parents, in settling the state court wrongful death action, had relied upon fraudulent misrepresentations made by the several defendants, and the district court specifically found as a matter of fact that the conspiracy between the defendants had prevented the proper functioning of the state judicial system. *Bell*, at 1226-1227. The *Bell* decision, to the extent that the decision is premised upon a denial of the right to access to the courts, is premised upon compelling proof that, and specific findings of fact that, the state court remedy available *had been* rendered ineffective. *Bell*, because of the singular facts the case presented, is of no assistance to the petitioner, and in fact militates against the position petitioner asserts. Absent a finding of fact that a state court remedy had been rendered ineffective by the defendants in the case at bar, the *Bell* decision is simply not persuasive.

Vasquez v. Hernandez, 60 F.3d 325, 329 (7th Cir. 1995), cited by Petitioner as imposing a more stringent standard than *Bell, supra*, actually imposes the identical burden as that imposed by the United States Court of Appeals for the Sixth Circuit in the case at bar — that to establish a denial of access, one must establish that the actions of the defendants rendered the state court remedy ineffective:

> We reiterate that by our holding, we do not mean to defend the defendants' actions. The deplorable nature of their conduct is without question. Nevertheless, though the Vasquezes are correct in their assertion that the wrongfulness of an act is judged at the time it is done, the constitutionality of that act may indeed depend on other contextual factors including the passage of time. "Not every act of deception in connection with a judicial proceeding gives rise [to a constitutional action]." . . . The Vasquezes' constitutional rights were ultimately preserved in this case. The cornerstone of our decision in *Bell* was that the conspiracy had prevented a full and open disclosure of facts crucial to the cause of action, *rendering hollow the plaintiffs' right of access.* In this case, the cover-up failed to achieve such ends. There are no allegations claiming that the Vasquezes have been prevented from pursuing a tort action in state court or that the value of such an action has been reduced by the cover-up. We agree, therefore, with the district court in holding that the delay caused by the defendants' alleged conspiracy failed to deprive the Vasquezes of their right to access.

Application of the rule announced in *Vasquez* to the case at bar would mandate summary judgment in favor of the respondents, because petitioner could not establish — indeed, did not even attempt to establish — that she was prevented from pursuing a

tort action in state court or that the value of such an action has been reduced by the cover-up.

Petitioner artfully (albeit unsuccessfully) sought to evade meaningful inquiry by the district court into whether she was prevented from pursuing a tort action in state court. The district court recognized, however, the paradox inherent in the claim that petitioner was denied access to the (state) courts by a cover up, coupled with the timely (*i.e.*, within the period of the statute of limitations for the filing of a state tort claim) filing of a federal court action premised upon claimed denial of access:

> Plaintiff cannot claim simultaneously that (1) she had sufficient knowledge based upon rumors in the community that Todd or Russell Kulinski was the second driver, to sue defendants for protecting somebody with connections to the police department, and (2) that she nonetheless lacked sufficient knowledge to *file a tort claim* naming the Kulinskis.

(Footnote omitted; emphasis added) (Order Denying Plaintiff's Motion for Reconsideration, App. A-3, 12). Comparing *Vasquez*, where there was no allegation that plaintiffs were prevented from pursuing a tort action in state court, with this case, where there was no credible evidence offered that the plaintiff was prevented from pursuing a tort action in state court, leads to the same conclusion — neither plaintiff(s) can prevail on a denial of access claim under § 1983.

Petitioner claims that the *Ryland* case somehow supports her position. The *Ryland* case does not speak to the very proposition that Petitioner claims the case is authority for. In *Ryland*, the United States Court of Appeals for the Fifth Circuit reversed the dismissal of a case alleging, *inter alia*, denial of access to the courts, on the basis that the Rylands had stated a cognizable cause of action:

> Their complaint alleged that agents of the state intentionally engaged in conduct that interfered with their exercise of their constitutionally protected right to institute a wrongful death suit in the Louisiana courts. As we have already shown, this theory of recovery is a valid one.

Id., at 973. *Ryland* provides absolutely no guidance for making the factual determination that the district court originally, and the United States Court of Appeals for the Sixth Circuit *de novo*, was confronted with and made in this case — that the petitioner had presented insufficient evidence — in fact, no evidence at all — that the courts of the State of Michigan could not provide her an effective remedy. *Ryland*, a decision assessing whether the complaint stated a cognizable cause of action under 42 U.S.C. § 1983, simply has no application to this case, which assesses the sufficiency of the evidence available to the petitioner to withstand summary judgment.

Petitioner claims that *Agresta v. City of Philadelphia*, 801 F. Supp. 1464 (E.D. Pa. 1992), somehow supports her position. In *Agresta*, the "parents of a suspect gunned down by police brought [a] claim that investigation into [the] incident resulted in denial of access to courts" (Pet., 22). In *Agresta*, the parents of the suspect sued the City of Philadelphia, and no individual defendant(s), claiming a denial of access to the courts. They did *not* prevail:

> [T]he Agrestas did not sue any individuals for concealing evidence or otherwise denying them their constitutional right of access to the Court. Plaintiffs have only sued the City itself. Even assuming the City, through its policymakers, desired to conceal the true facts of Samuel Agresta Jr.'s death, the Agrestas have not proven by a preponderance of the evidence that

> the City, through its policymakers, had a policy, procedure, custom, or lack of policy or procedure resulting in the denial of the Agrestas' constitutional right of access to the courts.

Agresta, supra, at 1474. *Agresta* certainly is neither a "very similar case involving a cover-up by state actors", as Petitioner claims, nor can the case serve as authority for any proposition at issue in the instant case. *See also Landrigan v. City of Warwick*, 628 F.2d 736, 742 (1st Cir. 1980), in which the First Circuit in 1980 affirmed the dismissal of a § 1983 cover-up claim because the plaintiff had prevailed in a state court action based on illegal police conduct and, therefore, had suffered no damages from the alleged cover-up.

II.

THE PETITION SHOULD BE DENIED BECAUSE A WORKABLE STANDARD FOR DETERMINATION OF WHEN A DENIAL OF ACCESS HAS OCCURRED EXISTS AND IS UNIFORMLY APPLIED.

The petition's claim that this Court should establish a standard detailing "when state actors covering up crucial facts amounts to a denial of access to the courts" is meritless. The petitioner asks that this Court *replace* the extant standard she has not and cannot meet, with a bright line rule she does not articulate. This Court articulated a workable standard in *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977), when this Court stated that in order to establish denial of access to the courts, a plaintiff must establish that an abuse denied her "effective" and meaningful" access to the courts. *Bounds*, 430 U.S. at 822. The petition, in claiming that this Court should establish a standard detailing "when state actors covering up crucial facts amounts to a denial of access to the courts", thus

ignores an existing standard and ignores the simple, unassailable fact that both the district court and the United States Court of Appeals for the Sixth Circuit have concluded, as a matter of fact, that she was *not* denied meaningful and effective access to the courts of the State of Michigan

What the petitioner actually asks is that this Court hold that concealment of evidence, which would toll the state statute of limitations, is a federal constitutional tort because such concealment constitutes a denial of access to the courts. Yet the courts of the State of Michigan provide adequate remedies for concealment of such evidence, and when such remedies exist, no denial of access can be established. What the petitioner actually asks is that this Court hold that *any* obstruction of state judicial proceedings, no matter how minimal the effect and no matter how expansive the remedies provided by the state courts for such obstruction, is a federal constitutional tort because such obstruction constitutes a denial of access to the courts. Yet the courts of the State of Michigan provide adequate remedies for obstruction of state judicial proceedings, and when such remedies exist, no denial of access can be established. What the petitioner actually asks is that this Court hold that 42 U.S.C. § 1983 replaces the normal state court remedies provided for concealment or spoliation of evidence by creating a new and expanded federal constitutional tort. The petitioner makes that request despite the simple and unassailable fact that she has never even *claimed* that the courts of the State of Michigan do not provide a remedy for the wrong she actually complains of.

The concurring opinion in *Swekel, supra*, App. A-4, 12-13, succinctly addresses the merit of petitioner's request:

> A concealment of evidence claim that would merely toll the running of the state statute of limitations or give rise to a state action for "spoiliation of evidence"

does not "deny access" to the state courts. There must be an allegation and then a showing that the doors of the state courthouse have been closed by the defendant's action or that the state court remedy has been rendered ineffective. We should not simply displace the normal state court remedies for spoliating or concealment of evidence or obstruction of state judicial proceedings with a new, expanded' loosely worded, federal constitutiuonal tort under § 1983. Right of access to the courts claimed under the federal constitution should be reserved for situations in which adequate state remedies are made unavailable and should not include mere claims of interference with evidence.

CONCLUSION

This case presents no issue of constitutional import or jurisprudential significance, but merely presents an instance where petitioner, despite being allowed to conduct unhindered discovery in a state court suit for damages and in the § 1983 action claiming deprivation of the right to access to the courts, has neither claimed nor established that the courts of the State of Michigan could not remedy any pre-filing abuses by state actors. The petition fails to demonstrate any compelling reason why a writ of certiorari should be granted. The petition fails to demonstrate any conflict between the decision of the Sixth Circuit Court of Appeals in this case and any decision of another United States Court of Appeals. The petition fails to identify any important federal question decided in this case which has not been previously settled by this Court, or which conflicts with relevant decisions of this Court. There is no compelling reason for granting the writ of certiorari requested. See Rules of the Supreme Court of the United States, Rule 10.

Respectfully submitted,

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